



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jeffrey L. Clet

**SUBJECT: FIRE AND HAZARDOUS
MATERIALS - MULTIPLE OR
REPEAT VIOLATORS**

DATE: May 24, 2006

Approved	/s/	Date	05/26/06
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BACKGROUND

This memorandum is prepared in response to the Mayor's March 2006 Budget Message that directs the City Manager to explore the possibility of raising fees for multiple or repeat violators of Fire and Hazardous Material safety laws.

In the review of business practices as part of the development of a Fire Prevention Business Plan, the Fire Department has been exploring options for dealing with multiple and repeat violators of safety codes. The Department recognizes that there are significant safety concerns inherent in repeat violations. Additionally, it recognizes the ongoing costs of repeated inspections and the potential costs of emergency response when the end product of repeat violations is a direct safety threat to the public or the environment. In analyzing alternatives to encourage compliance by repeat violators, the Fire Department looked not only at the suggestion by the Mayor to raise fees, but also to administrative and criminal remedies.

ANALYSIS

The San Jose Fire Department uses a fee-based system to recover costs associated with annual inspections of facilities and developmental services permits. Fees are charged to recover the cost of inspections, plan review and documentation review. Facilities that receive annual permits are charged a fee that includes the review of documentation and the first two inspections. Each subsequent inspection, starting with the third inspection, is billed at an hourly rate until violations are corrected. The Fire Department is working on a process to create a significant disincentive to multiple or repeat violations.

Based on conversations with the City Attorney's Office, the Fire Department has determined that fees are not an appropriate mechanism for dealing with multiple or repeat code violations. Fees are used to recover costs of services provided to the community, such as an inspection fee. Fines are penalties assigned to responsible parties that are in violation.

The Fire Department is currently exploring numerous methods to discourage businesses from becoming multiple or repeat violators of Fire and Hazardous Materials Safety laws. Recent increases in inspection staffing levels, accompanied with future proposed staffing increases, will provide the Department with additional tools to deal with repeat violations, by providing the opportunity to educate our business community, and by providing staffing levels that can support an effective enforcement program. The Department is in the final stages of creating a comprehensive Administrative Citation Program that will deter repeat violations and establish a penalty for businesses that continually operate out of compliance. An Administrative Citation is a civil financial penalty imposed by the City of San José for recalcitrant violations of the Municipal Code. A recalcitrant violation is a violation that is not remedied with compliance by the responsible party in a timely manner, usually within three site inspections, or a violation that continually reoccurs at the same facility. Fine amounts are set in the schedule of fines by Council resolution. The Administrative Citation Program decriminalizes the citation process. It carries no criminal charges, but can be very effective in achieving compliance.

While the majority of businesses within San José comply with applicable requirements, a small fraction of businesses chronically violate or refuse to comply. Implementing an Administrative Citation Program will allow the Fire Department to provide better protection to the public, and level the playing field among regulated businesses. Fire Department staff may require a business to install or implement safety controls, engineering controls, or to incur additional expenses to satisfy applicable code requirements. If competitors refuse to comply or fail to implement the same requirements to meet the applicable codes, they gain a direct economic advantage over those that do comply.

Currently, most enforcement by the Fire Department is done through the criminal courts. This requires a significant allocation of City resources, including Fire staff, Police resources, and the City Attorney's Office. Other City departments that have implemented Administrative Citation Programs have found them very useful in increasing compliance. The Fire Department will continue to use other remedies for violations, including criminal citations, but will also begin issuing administrative citations for some violations.

While the basic outline of the Fire Department's Administrative Citation Program is complete, there are specific details that are still being worked out including the actual operational policies and procedures to be followed by Department staff. Assuming that the details are complete, current plans are to bring the Fire Department's Administrative Citation Program to Council for consideration in early 2007.

/s/
JEFFREY L. CLET
Fire Chief